

STAFF REPORT

November 28, 2001

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**No. 01FV002 - Fence Height variance to allow a six foot high fence in the front yard**      **ITEM**

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GENERAL INFORMATION:

PETITIONER	Steve and Trisha Nolan
REQUEST	<b>No. 01FV002 - Fence Height variance to allow a six foot high fence in the front yard</b>
LEGAL DESCRIPTION	Lot 23 of the NE1/4 NE1/4 of Section 21, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately .64 Acres
LOCATION	4605 Easy Street
EXISTING ZONING	Low Density Residential District
SURROUNDING ZONING	
North:	Medium Density Residential District (PD)
South:	Low Density Residential District
East:	Low Density Residential District
West:	Low Density Residential District
PUBLIC UTILITIES	City water and sewer
REPORT BY	Lisa Seaman

RECOMMENDATION:

Staff recommends that the Fence Height variance to allow a six foot high fence in the front yard be denied.

GENERAL COMMENTS:

The petitioner has requested a variance to allow a six foot high wood fence in the front yard of the subject property. The fence was constructed without obtaining the necessary variance. The property is located at the southeast corner of the intersection of Corral Drive and Easy Street. The site plan submitted with this request shows that the six foot fence is currently located along the entire length of the front lot line abutting Corral Drive, approximately one foot back from the Corral Drive front lot line. Because the fence has been constructed along the entire length of the Corral Drive frontage the fence also encroaches into the Easy Street front yard setback.

A day care center is currently operating on the subject property. The petitioner has indicated that he wants the fence to remain to provide privacy and security for the children that are cared for at the day care facility. However, Section 17.50.150 of the Rapid City Municipal Code requires that the fenced play area be located a minimum of 25 feet from any property line located adjacent to a public right of way.

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STAFF REVIEW: Staff has reviewed this request with respect to Section 15.40.050 of the Rapid City Municipal Code. This portion of the code pertaining to fences states that "...the City Council may approve exceptions to the height requirements if it is determined that the exception is not contrary to the public interest and the exception will not be injurious to the surrounding neighborhood...".

As mentioned previously the subject property is located at the intersection of Corral Drive and Easy Street and is the location of a day care center. Corral Drive Elementary School and an apartment complex are located across Corral Drive, to the south of the subject property. The portion of the lot directly west of the subject property is a drainage ditch and the property to the east has a single family residence that is located more than 350 feet east of the subject property. The fence does not block the view of any of the surrounding residences or encroach into the required sight triangle at the Corral Drive/Easy Street intersection. However, Section 17.50.150 of the Rapid City Municipal Code requires that Child Care Centers provide a fenced-in play area that is no closer than twenty five feet to any property line that abuts the right of way of a public street. Staff believes that a play area within the twenty five foot setback poses a safety concern for the children cared for at the Day Care Center. The applicant could move the fence back from the property line twenty five feet and comply with the requirements of both Section 17.50.150 Child Care Centers and Chapter 15.40 Fences and Walls of the Rapid City Municipal Code. Any hardship is self-imposed as the fence was constructed without the required approval.

As of this writing, the receipts for the required certified mailing have not been returned by the petitioner. Staff has not received any phone calls or other inquiries regarding this request.